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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

East Bay Sanctuary Covenant; Al Otro Lado; Innovation Law Lab; and Central American Resource Center in Los Angeles,

Plaintiffs,

v.

William Barr, Attorney General, in his official capacity; U.S. Department of Justice; James McHenry, Director of the Executive Office for Immigration Review, in his official capacity; the Executive Office for Immigration Review; Kevin McAleenan, Acting Secretary of Homeland Security, in his official capacity; U.S. Department of Homeland Security; Ken Cuccinelli, Acting Director of the U.S. Citizenship and Immigration Services, in his official capacity; U.S. Citizenship and Immigration Services; John Sanders, Commissioner of U.S. Customs and Border Protection, in his official capacity; U.S. Customs and Border Protection; Matthew Albence, Acting Director of Immigration and Customs Enforcement, in his official capacity; Immigration and Customs Enforcement,

Defendants.

Case No.: 3:19-cv-04073-JST

NOTICE OF MOTION AND EMERGENCY MOTION TO CONSIDER SUPPLEMENTAL EVIDENCE AND RESTORE THE NATIONWIDE SCOPE OF THE INJUNCTION

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TO RESPONDENTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs East Bay Sanctuary Covenant, Al Otro Lado, Innovation Law Lab, and Central American Resource Center of Los Angeles hereby move the Court to consider supplemental evidence in support of the necessary scope of preliminary injunctive relief to remedy Plaintiffs' harms, and to restore the nationwide scope of the preliminary injunction entered on July 24, 2019. *See* ECF No. 42.

This motion is brought pursuant Federal Rule of Civil Procedure 65 and is based on the accompanying Memorandum in Support and materials cited therein; the pleadings and evidence on file in this matter; the accompanying declarations; and such other materials and argument as may be presented in connection with the hearing on the motion.

The additional declarations Plaintiffs have asked the Court to consider are limited to the scope of the injunction, and are of the same nature as the plaintiff declarations filed in the first *East Bay Sanctuary Covenant* case, *see* 18-cv-06810-JST, ECF No. 8-3, 8-4, 8-6, 8-7, as well as the plaintiff declarations filed in this case in support of preliminary injunctive relief, *see* ECF No. 3-2, 3-3, 3-4, 3-5, which the government did not challenge factually. In light of the irreparable harm that Plaintiffs will face if the Interim Final Rule is not enjoined nationwide, Plaintiffs propose that Defendants' opposition to this motion be due within 48 hours of this filing, and that Plaintiffs' reply be due within 24 hours of the filing of Defendants' opposition. Should the Court wish to hear argument on this motion, Plaintiffs request a hearing on Friday, August 23, 2019, at 2:30 pm.

Counsel for Plaintiffs provided notice of their intent to file this motion to Defendants on August 18, 2019, by email to Erez R. Reuveni, Counsel for Defendants. Counsel for Plaintiffs will promptly send a copy of these filings to Mr. Reuveni by email.

Counsel for Defendants requested that Plaintiffs submit the following statement on their behalf: Defendants are not able to consent to a schedule without having the opportunity to see what new evidentiary matter Plaintiffs are submitting in support of their motion, as Defendants must determine whether they need to submit evidentiary matter of their own or to request expedited discovery as to Plaintiffs' evidence. Although Plaintiffs contacted Defendants about scheduling, because Defendants cannot review Plaintiffs' evidence before Plaintiffs file, Defendants propose that

the Court order the parties to meet and confer on a schedule that reasonably provides both parties sufficient time to submit or contest evidentiary matters relevant to Plaintiffs' pending motion. Defendants do not believe that can be accomplished in the 48 hours Plaintiffs propose Defendants have to respond, and note that in other cases in which discovery is needed to assess scope of injury, such proceedings often take months. *See, e.g.*, ECF Nos. 28 and 118, *United States v. California*, No. 18-490 (E.D. Cal.) (orders providing for expedited discovery period of nine weeks as to issues related to scope of injury).

Dated: August 19, 2019

Respectfully submitted,

/s/ Lee Gelernt

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Plaintiffs,

v.

William Barr, Attorney General, in his official capacity; U.S. Department of Justice; James McHenry, Director of the Executive Office for Immigration Review, in his official capacity; the Executive Office for Immigration Review; Kevin McAleenan, Acting Secretary of Homeland Security, in his official capacity; U.S. Department of Homeland Security; Ken Cuccinelli, Acting Director of the U.S. Citizenship and Immigration Services, in his official capacity; U.S. Citizenship and Immigration Services; John Sanders, Commissioner of U.S. Customs and Border Protection, in his official capacity; U.S. Customs and Border Protection; Matthew Albence, Acting Director of Immigration and Customs Enforcement, in his official capacity; Immigration and Customs Enforcement,

Defendants.

Case No.: 3:19-cv-04073-JST

MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION TO CONSIDER SUPPLEMENTAL EVIDENCE AND RESTORE THE NATIONWIDE SCOPE OF THE INJUNCTION

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INTRODUCTION

This Court issued an order preliminarily enjoining the challenged Interim Final Rule nationwide on July 24, 2019. *See* ECF No. 42. The government sought an administrative stay and a stay pending appeal from the Ninth Circuit. *See* No. 19-16487 (9th Cir.), Dkt. 3-1. The Ninth Circuit motions panel denied the government's request for an administrative stay that same day. *See id.*, Dkt. 19. On August 16, 2019, the motions panel denied the government's request for a stay "insofar as the injunction applies within the Ninth Circuit." *Id.*, Dkt. 30 (Order) at 3.

The motions panel did not disturb this Court's conclusions about Plaintiffs' likelihood of success on the merits or the equities, and agreed that the government has "not made the required 'strong showing' that they are likely to succeed on the merits on [the notice-and-comment] issue." *Id.* However, the motions panel limited the scope of the injunction to the Ninth Circuit. *Id.* Critically, however, the panel recognized that a nationwide injunction of the Rule could well be appropriate. But before it would uphold nationwide relief in this case, the panel required further record evidence and findings by this Court connecting that scope of relief to Plaintiffs' injuries. *Id.* at 3-6. Accordingly, the motions panel provided that "[w]hile [the preliminary injunction] appeal proceeds, the district court retains jurisdiction to further develop the record in support of a preliminary injunction extending beyond the Ninth Circuit." *Id.* at 8-9.

Consistent with that express permission from the Ninth Circuit, Plaintiffs now respectfully request that the Court consider additional evidence in support of a nationwide injunction, and, based on supplemental findings of fact, restore the nationwide scope of the preliminary injunction.[1] Absent nationwide relief, the serious and irreparable harm to Plaintiffs caused by the Rule cannot be fully remedied.

[1] Given the panel's clear acknowledgment that this Court retains jurisdiction to revisit the proper scope of the injunction, there is no jurisdictional bar to this Court restoring the nationwide scope of the preliminary injunction based on further factual findings. *See* Order at 8-9; *id.* at 9 ("Because the record is insufficiently developed as to the question of the national scope of the injunction, we vacate the injunction to the extent that it applies outside California and remand to the district court for a more searching inquiry into whether this case justifies the breadth of the injunction imposed.") (quoting *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1245 (9th Cir. 2018)); *see also* Fed. R. Civ. Proc. 62(d) (permitting district courts to "modify, restore, or grant an injunction" even while an interlocutory appeal is pending).

ARGUMENT

I. Nationwide Relief Is Necessary to Remedy Plaintiffs' Injuries.

As the Ninth Circuit motions panel confirmed, nationwide injunctions will be upheld where they are "necessary to remedy a plaintiff's harm." Order at 4. The declarations accompanying this motion—which supplement the declarations filed by Plaintiffs in support of their motion for a temporary restraining order, *see* ECF No. 3-2, 3-3, 3-4, 3-5—clearly demonstrate that the injunction in this case must be nationwide "to remedy the specific harm shown" to Plaintiffs. Order at 4 (quoting *City and County of San Francisco v. Trump*, 897 F.3d 1225, 1243-45 (9th Cir. 2018)).

As set forth below, Plaintiffs have specific reasons why a nationwide injunction is necessary to remedy the harms to their organizations. But one common theme is that asylum seekers frequently do not enter the country and complete their asylum proceedings within the same circuit, and it is not possible to predict asylum seekers' movements in advance. For instance, an asylum seeker may enter the U.S. through Texas, have a credible fear interview in New Jersey, and ultimately apply for asylum in California. *See* Alvarez Decl. ¶ 6; Supp. Manning Decl. ¶¶ 12, 16. The Declaration of Aaron Reichlin-Melnick discusses the reasons for and frequency with which this movement occurs. The declarations from each of the four Plaintiffs discuss these scenarios as they relate to the organization's work.

Innovation Law Lab: Law Lab's operations are not limited to the Ninth Circuit. In addition to its work in the Ninth Circuit, Law Lab has offices in Georgia, Missouri, and Texas; operates pro bono representation projects in Georgia, Kansas, Missouri, and North Carolina, with expansion underway to New Mexico; and provides direct representation to persons applying for asylum outside the Ninth Circuit. *See* Supp. Manning Decl. ¶¶ 4-5. And six of the seven detention centers at which Law Lab regularly works are outside the Ninth Circuit. *Id.* ¶ 19. Given Law Lab's national scope, an injunction limited to the Ninth Circuit would not fully remedy the harm to the organization.

First, because Law Lab provides training, materials, and overall legal assistance to other organizations and asylum seekers throughout the country, the harm to Law Lab will not be remedied by an injunction limited to the Ninth Circuit. Among other things, Law Lab currently uses synchronized templates and materials across its program sites. A geographically limited injunction

will force it to abandon this practice, and will require it to meaningfully restructure its operations to effectively serve persons who are subject to the transit ban as well as persons who are not. *Id.* ¶¶ 7-8, 13-14, 20.

Second, the fact that Law Lab directly represents individuals outside the Ninth Circuit means that an injunction limited to the Ninth Circuit is insufficient. *Id.* ¶ 15.

Moreover, providing legal guidance and assistance to persons subject to the Rule will be a significant burden on Law Lab employee time and program operations, as these persons will now only be eligible for withholding of removal and relief under the Convention Against Torture. Those forms of relief are more time consuming than asylum to pursue, as they involve higher burdens of proof than asylum and require the development of distinct and more in-depth legal analyses. They also do not permit derivative applications to be filed on behalf of family members. In addition, Law Lab will have to retrain its volunteers on these forms of relief and adjust how it screens individuals for relief. *Id.* ¶¶ 9, 11.

And, importantly, because asylum seekers often move between different locations—and between judicial circuits—during their proceedings, Law Lab's ability to provide legal assistance workshops will be hindered. *Id.* ¶¶ 12, 16. For instance, at Law Lab's workshops in Tijuana for individuals about to seek asylum in the U.S., Law Lab will have to provide guidance about a Rule that might apply at different points throughout their asylum cases, depending on where they ultimately cross the border or where they end up once in the U.S. Indeed, the number of asylum seekers Law Lab serves in Tijuana who end up in detention centers in Louisiana and Mississippi has been significantly increasing. *Id.* ¶ 12. *See also* Reichlin-Melnick Decl. (discussing movement of asylum seekers across jurisdictions).[2] As a result, it will now be impossible simply to provide all of these asylum seekers and their legal representatives with one set of guidelines.

[2] The Reichlin-Melnick declaration analyzes recent statistics from the Department of Homeland Security ("DHS") and Executive Office for Immigration Review demonstrating that asylum seekers frequently move throughout the country during the asylum process, either by their choice or because DHS transfers detained asylum seekers from one detention center to another. This data reveals that there is almost no connection between asylum seekers' place of entry and ultimate destination. Reichlin-Melnick Decl. ¶¶ 5-6, 14-15.

Finally, an injunction limited to the Ninth Circuit not only will frustrate Law Lab's operations outside the Ninth Circuit, but will adversely impact its programs within the Ninth Circuit as well. Because serving individuals affected by the Rule's categorical ban is so time consuming, Law Lab will have to direct significant resources towards their representation, which will negatively affect clients in the Ninth Circuit and may force Law Lab to serve fewer people overall. Supp. Manning Decl. ¶ 17.

East Bay Sanctuary Covenant ("EBSC"): The harms caused to EBSC by the Rule, *see* ECF No. 3-2, will persist if the Rule is allowed to go into effect everywhere other than the Ninth Circuit. *See* Supp. Smith Decl. ¶ 4. Part of EBSC's mission is to serve clients in affirmative asylum cases, regardless of where they entered the United States. Accordingly, EBSC serves clients who enter the United States anywhere in the country, not just the Ninth Circuit. A sizable portion of EBSC's clients enter the United States outside the Ninth Circuit's geographic boundaries and then end up in California, where they apply for asylum. More than 22% of EBSC's affirmative asylum applications filed in 2019 were on behalf of clients who transited through Mexico without applying for protection there and then entered the United States in Texas or New Mexico, i.e., outside the Ninth Circuit. If the organization is unable to serve a sizable portion of its client base in affirmative asylum cases, its mission will be frustrated, and a core part of its operations will be undermined. *Id.* ¶¶ 5, 7.

For the same reason, an injunction limited to the Ninth Circuit also jeopardizes EBSC's funding streams. Pursuant to a grant from the California Department of Social Services ("CDSS"), EBSC receives $2,000 for every affirmative asylum case it files. If, because of the Rule, EBSC is no longer able to handle affirmative asylum cases for individuals who transit through a third country en route to the southern border and enter outside the Ninth Circuit, the organization likely will face a marked decrease in its budget. Indeed, if the Rule is allowed to remain in effect outside the Ninth Circuit, EBSC estimates that it could lose up to $50,000 under the terms of its CDSS grant during the rest of 2019 and up to $100,000 in 2020. *Id.* ¶ 8.

Because of the strain imposed on EBSC if the Rule remains in effect outside of the Ninth Circuit, EBSC will either have to significantly cut its affirmative asylum program and staff, or overhaul its program to provide types of assistance it is not currently equipped or trained to provide.

Id. ¶ 9. Notably, EBSC does not currently have sufficient capacity or expertise to handle applications for humanitarian relief in the removal context. Yet to continue serving clients affected by the Rule, EBSC will have to shift to representing those individuals in removal cases. Doing so would be extremely resource intensive for EBSC. *Id.* ¶ 10. EBSC will also be burdened by having to provide different services to those subject to the Rule and those not subject to the Rule. *Id.* ¶¶ 12-13.

CARECEN: The injuries inflicted on CARECEN by the Rule, *see* ECF No. 3-5, will persist if the Rule is not enjoined nationwide, *see* Alvarez Decl. ¶ 4. CARECEN represents Central American asylum seekers regardless of where they enter the United States. Nearly all of CARECEN's current asylum clients entered through the southern border after transiting through a third country without applying for protection there, and at least 60% of those individuals entered outside of the Ninth Circuit. *Id.* ¶ 5. Thus, the majority of CARECEN's asylum clients could still be subject to the Rule's categorical bar on asylum under an injunction limited to the Ninth Circuit. *Id.* CARECEN would be forced to divert significant resources to serve these clients, as they would only be eligible for far more resource-intensive forms of relief, such as withholding and CAT protection. *Id.* ¶¶ 8-9. Despite having to devote significantly increased resources to such applications, CARECEN's main source of funding for its asylum work pays a fixed amount per case. This will significantly strain the organization's budget. *Id.* ¶ 9.

In addition, CARECEN will have to undertake time consuming screening efforts to determine whether a prospective client is subject to the Rule under a geographically limited injunction. Prospective clients who call CARECEN's offices for representation frequently do not have paperwork showing where they entered the country or have other geographical information that may be relevant to the applicability of the Rule. *Id.* ¶ 11. CARECEN staff therefore will have to do additional investigation and screening to determine whether the Rule is likely to apply. *Id.* It will also have to bifurcate its operations to provide different services to those subject to the Rule and those not subject to it. *Id.* ¶¶ 10-11.

Al Otro Lado: Al Otro Lado will continue to suffer injuries if the Rule is enjoined only in the Ninth Circuit. *See* ECF No. 3-3; Ramos Decl. ¶¶ 3-4. Of the thousands of noncitizens Al Otro Lado

serves through its offices in Tijuana, Mexico, not all cross the border in the Ninth Circuit. Rather, some ultimately enter the United States elsewhere, including Texas and New Mexico. *Id.* ¶ 5. It is impossible for Al Otro Lado to know with certainty ex ante where a given asylum seeker whom they serve will ultimately enter the United States. *Id.* ¶¶ 5-8.[3] As a result, they will now have to provide burdensome additional guidance to ensure that individuals understand the Rule's impact in different parts of the United States. *Id.* ¶¶ 9-10.

Likewise, Al Otro Lado serves individuals who end up outside the Ninth Circuit for their asylum proceedings. Al Otro Lado clients who entered the United States along the southern border in California have ended up in Colorado, Georgia, Maine, Maryland, Michigan, Minnesota, and Wisconsin. *Id.* ¶ 6. This cross-circuit movement happens because of where the government chooses to detain a given asylum seeker, or because of where a given asylum seeker goes to live after release from detention. *Id*. *See also* Reichlin-Melnick Decl. In Al Otro Lado's experience, this cross-circuit movement is quite common, particularly for unaccompanied minors. Ramos Decl. ¶ 7. As with the uncertainty about ultimate border-crossing locations, it is impossible for Al Otro Lado to know for certain where an individual they advise will end up once they are in the United States. *Id.* ¶ 8.

As a result, if the Rule is only enjoined in certain parts of the country, rather than nationwide, Al Otro Lado will have to advise asylum seekers without knowing whether they will ultimately be subject to the Rule's categorical asylum bar or not. To fulfill their professional obligations, Al Otro Lado will have to account for all possibilities in giving advice. Having to do so will require Al Otro Lado to expend significant organizational resources regarding training materials, staff time, and capacity, and would create a serious burden for the organization. *Id.* ¶¶ 9-10.

II. Nationwide Relief Is Appropriate on the Record Here.

This Court and the Ninth Circuit concluded that the first asylum ban was likely unlawful and enjoined it nationwide. The Supreme Court did not disturb that conclusion and let stand the

[3] Likewise, Law Lab's declaration makes the same point that the organization does not know in advance where asylum seekers it serves in Mexico will enter the U.S. or where they will travel around the country during the asylum process. Supp. Manning Decl. ¶¶ 12, 16.

injunction's nationwide scope. *See Trump v. East Bay Sanctuary Covenant*, 139 S.Ct. 782 (2018) (denying stay). The record of harm to Plaintiffs absent a nationwide injunction, as supplemented, is even stronger than the record in that case. The Court should therefore reinstate the nationwide injunction to remedy Plaintiffs' injuries. Moreover, the public interest calculation—which the stay panel did not disturb—strongly favors a nationwide injunction given the grave harm individual migrants will face.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be granted.

Dated: August 19, 2019

Respectfully submitted,

/s/ Lee Gelernt

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SUPPLEMENTAL DECLARATION OF STEPHEN W. MANNING, EXECUTIVE DIRECTOR, INNOVATION LAW LAB

I, Stephen W. Manning, declare as follows:

1. I am an attorney licensed to practice in the State of Oregon and am a member in good standing of the bars of the United States District Court for the District of Oregon, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States. I am a member of the American Immigration Lawyers Association ("AILA"), a former member of the Board of Governors of AILA, and a former Chair of the Oregon Chapter of AILA. I am over 18 and have personal knowledge of the facts described herein.

2. I am the Executive Director of the Innovation Law Lab ("Law Lab"), a nonprofit in Oregon that I founded to improve the legal rights of immigrants and refugees in the United States.

3. I previously submitted a declaration in this matter. *See East Bay Sanctuary Covenant v. Barr*, No. 3:19-cv-04073-JST (N.D. Cal.) ECF No. 3-4 (July 17, 2019). This declaration supplements that first declaration.

4. As I described in my previous declaration, Law Lab has an office in Oakland, California, in addition to offices throughout the United States, including Portland, Oregon; Atlanta, Georgia; San Diego, California; Kansas City, Missouri and San Antonio and El Paso, Texas.

5. Law Lab operates pro bono representation projects called Centers of Excellence, which provide support to noncitizens and their pro bono attorneys including legal, technical, and strategic assistance in the preparation and presentation of claims, in Georgia, Kansas, Missouri, North Carolina, and Oregon, with expansion underway to New Mexico and California. Our BorderX project uses technology and collaboration tools to provide support to legal service providers at immigrant detention centers throughout the United States and, under a recent

expansion, at several sites on both sides of the U.S.-Mexico border. On August 1, 2019, we opened an office in El Paso, Texas as part of our membership in the El Paso Immigration Collaborative (EPIC), which provides legal services and representation to all release-eligible asylum seekers detained at five detention centers in the El Paso jurisdiction. We also provide direct representation to persons applying for asylum inside the Ninth Circuit and outside the Ninth Circuit.

6. If the asylum transit ban went into effect in jurisdictions outside of the Ninth Circuit, there would be an immediate and significant detrimental effect on Law Lab's ability to serve clients and maintain its programs across the country.

7. Law Lab's programming has a national reach not only because of our diverse geographic locations, but also because we operate our programs collaboratively across program sites. For example, Law Lab operates pro se asylum workshops in Atlanta, Georgia; Kansas City, Missouri; Portland, Oregon; Tijuana, Mexico; and at the U.S.-Mexico border. Our Atlanta project was the first to launch the asylum workshop concept, and templates and materials developed there are used across our other program sites. If for example people fleeing persecution in Atlanta were subject to the asylum transit ban, while people fleeing persecution in Portland were not, Law Lab could no longer use synchronized materials across its asylum workshops.

8. Law Lab employees also regularly staff these workshops at all of our sites, particularly in Atlanta, Portland, and Tijuana. We hold asylum workshops on a monthly basis in Atlanta and Portland, and, in collaboration with partner organization Al Otro Lado, several times a month in Tijuana. Law Lab attorneys and accredited representatives coordinate and implement the workshops, and also directly provide some legal services and advice to immigrant attendees. Our workshops in Atlanta and Portland almost always have attendees who have crossed the border both within and outside of the Ninth Circuit. If the asylum transit ban were in place in parts of the

border, but not others, our asylum workshops would have to be meaningfully restructured in order to effectively serve persons who are subject to the transit ban and persons who are not.

9. Providing legal guidance and asylum application assistance to persons subject to the transit ban at these workshops would be a significant burden on Law Lab employee time and program operations. The majority of persons served at these workshops are Central American asylum seekers who would be subject to the asylum transit ban. First, Law Lab would have to spend additional time developing the facts and legal theories for asylum applicants subject to the transit ban, as these applicants would be eligible only for withholding of removal and relief under the Convention Against Torture (CAT). Withholding and CAT have a higher burden of proof than asylum, and these applications would require the development of entirely distinct and more in-depth legal analyses. Law Lab staff supervise and train attorney and accredited representative volunteers at these workshops, and would have to devote significant time to re-training these volunteers on the new standards and how to screen for attendees who might be subject to the ban.

10. For example, just this weekend, Law Lab operated a pro se asylum workshop in Atlanta for persons seeking asylum. The workshop is part of a regular series of programming. Our staff—based in Georgia, California, Missouri, Florida, Washington, and Oregon--spent many hours training volunteers on law, process, and our materials; preparing technology for use in the workshops; and preparing individual clients and client applications in order for the workshop to be successful. However, because we used a centralized set of training materials and technology—all of which are designed around a uniform application of the asylum regulations—the workshop was likely for nothing and will have to be redone. Before it can be redone, though, we will have to divert resources from other projects to re-programming because the injunction does not apply nationwide.

11. Additionally, most of the persons fleeing persecution who we serve at our workshops are in family units. Often a nuclear family can file a single asylum application, with the spouse and minor children benefiting as derivatives. But because withholding of removal and CAT do not allow derivative relief, every member of a family subject to the transit ban would have to file a separate application. This would limit Law Lab's workshop capacity significantly—instead of completing eight applications for eight families, for example, we might only have capacity to complete eight applications for two families with four members each.

12. The workshops in Tijuana, which provide legal guidance to persons who are about to seek asylum, would also be hindered because we would have to provide guidance about a rule that might apply to people at different points throughout their asylum cases. In my experience, it is not uncommon for a person fleeing persecution to cross the border at a different location than the one in which they had sought legal advice. Additionally, the state in which a person initially requests asylum is often not the same state where they will be detained, have their credible fear interview, or have their case heard on the merits in immigration court. Therefore, even at our workshops in Tijuana, where most people anticipate seeking asylum at a border within the Ninth Circuit, we would need to create and provide guidance about the implications of the asylum transit ban for every individual seeking assistance. Specifically, there has been a significant increase of asylum seekers that Law Lab has provided guidance to in Tijuana that end up in detention centers in Louisiana and Mississippi, despite the fact that they entered the US to request asylum in the Ninth Circuit.

13. We intend to replicate the Tijuana workshops, materials and specialized technology that Law Lab developed to serve asylum seekers along the U.S.-Mexico border—both inside and outside the Ninth Circuit. For example, in late July, Law Lab began to implement an expansion of

its services to asylum seekers using the Tijuana project as our model with a focus on Ciudad Juarez. Given our very limited financial resources and staff, the program expansion would likely only be scalable if we could replicate our Tijuana workshops, materials, and specialized technology at the sites in Ciudad Juarez.

14. In addition to materials used at nationwide asylum workshops, Law Lab creates written materials and technology for use across our Centers of Excellence pro bono programs, our BorderX detention project, and other initiatives that serve people fleeing persecution throughout the United States. These materials include printed guides, worksheets, training videos, self-help videos, and other resources that are used around the country. If the asylum transit ban were to apply to people fleeing persecution outside of the Ninth Circuit, Law Lab would have to substantially revise its materials across programs, and create bifurcated resources going forward. For example, Law Lab is just finishing several months of work on a short client-targeted video that explains the elements of asylum in plain language. We planned to use this video as an educational tool and distribute it widely amongst our partners and amongst communities of persons fleeing persecution. If the asylum transit ban is allowed to go into effect, the video will be essentially useless, since the ban adds an additional element to asylum eligibility that the video does not discuss. To create an effective resource going forward, Law Lab would have to entirely re-work the initial video, and likely create two versions for use inside and outside the Ninth Circuit.

15. Though Law Lab focuses its work on building effective and scalable representation programs, we also engage in direct representation cases when necessary to serve our mission. For example, I represented eighty men fleeing persecution who were held at the Sheridan Federal Correctional Institute in Sheridan, Oregon, in the summer of 2018; 100% of my clients passed their credible fear interviews and 97% were subsequently released from detention on bond or

parole. Law Lab continues to directly represent clients who were previously detained at Sheridan, and also directly represents clients in jurisdictions outside of the Ninth Circuit. If the asylum transit ban were to go into effect outside the Ninth Circuit, our limited direct representation work would become significantly more complicated and burdensome.

16. Additionally, the clients served by Law Lab's programs do not complete their immigration case in a single jurisdiction. It is possible that a client would move seamlessly between our program sites—and thus between different judicial circuits—as their case progresses. A person fleeing persecution might receive a legal orientation and services at a workshop supported by Law Lab in Tijuana, Mexico; obtain release on bond or parole from a detention center in Texas with assistance from our BorderX project; and complete their asylum application at a Law Lab-run legal workshop in Atlanta, Georgia. Many persons served by Law Lab programs move between jurisdictions throughout the lifetime of their asylum case as well. In my experience, such movement between jurisdictions is common for asylum seekers.

17. Law Lab's programs within the Ninth Circuit will also be adversely impacted if the asylum transit ban rule goes into effect in other jurisdictions. Law Lab coordinates the Equity Corps of Oregon, which is the region's first government-funded universal representation program. A high number—likely close to 90 percent—of the Equity Corps' clients are people who are fleeing persecution, many of whom arrived recently to the United States. Equity Corps' asylum clients enter the United States to seek protection at or in between ports of entry across the U.S.-Mexico border, and a significant percentage of these clients first entered the United States in Texas or New Mexico. If the asylum transit ban rule went into effect outside the Ninth Circuit, Equity Corps might have to shift significant resources towards representation of clients who entered the country in Texas or New Mexico and are subject to the ban. These resources would include both

the devotion of additional time to withholding of removal and Convention Against Torture applications for these clients, who would not be eligible for asylum, and also re-working of case templates, resources, and materials to account for eligibility differences based on place of entry. This resource diversion would negatively affect other clients within the Equity Corps program, and also would harm the program as a whole, which could be forced to serve fewer people overall because of the increased time burden required for a subset of cases.

18. Law Lab's work providing strategic support, limited legal assistance, and advocacy in the cases of people fleeing persecution who were forcibly returned to Mexico under the "Migrant Protection Protocols" (MPP) program would be dramatically impacted if the asylum transit ban rule went into effect outside of the Ninth Circuit. Law Lab works directly with people subject to MPP whose cases are heard in San Diego, California and El Paso, Texas; we also consult with projects that are providing assistance in Laredo, Texas and Brownsville, Texas. Because Mexican nationals cannot be subject to MPP, all of the cases we support in this work are asylum cases where the applicant traveled or resided in a country other than their country of origin before seeking asylum in the United States. Therefore, nearly all individuals subject to MPP outside of the Ninth Circuit would potentially be subject to the asylum transit ban while also facing the significant challenges that the MPP poses in litigating their asylum cases. This combination would make our work in El Paso and our consulting in Laredo and Brownsville significantly more burdensome.

19. Finally, our BorderX and EPIC programs would be significantly harmed if the asylum transit ban rule went into effect outside the Ninth Circuit. BorderX works regularly in seven immigrant detention centers, six of which are outside of the Ninth Circuit. As I noted in my prior declaration, 100% of the noncitizens BorderX serves are asylum seekers, the majority of whom transited through a third country before arriving to the United States. If the rule were to go

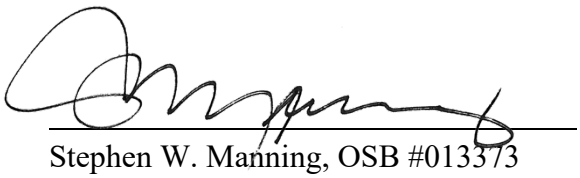
into effect outside of the Ninth Circuit, work in at least six of BorderX's program sites would significantly increase in difficulty, as release eligibility would be severely limited, if not eliminated, for many of our clients, and the program would have to develop alternative (and time consuming) release strategies for clients detained in those facilities. That is because release eligibility turns to a significant degree on eligibility for asylum. BorderX, like our other programs, would also have to change its templates, materials, and guidance to account for the different eligibility regimes that would govern clients based on place of entry to the United States and place of detention.

20. In short, Law Lab's work is national, not only in terms of program sites and direct representation of clients where necessary, but also the ways that our projects work together to provide high-quality resources to unrepresented asylum seekers, pro bono attorneys, and other representation projects. Allowing the asylum transit ban to go into effect outside the Ninth Circuit would not only harm our multiple programs in place outside the Ninth Circuit, but would also harm our organization's ability to employ a unified approach to our strategic programs. To fully remedy the harms the Rule will inflict on Law Lab, the Rule would need to be enjoined nationwide, not just in the Ninth Circuit.

21. Finally, had Law Lab been provided the opportunity to comment on the Rule before it went into effect, Law Lab would have submitted comments about why the Rule is unlawful and factually unsupported, and why it must be rescinded nationwide.

I hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.

EXECUTED this 18th day of August, 2019.



Stephen W. Manning, OSB #013373

SUPPLEMENTAL DECLARATION OF MICHAEL SMITH, REFUGEE RIGHTS PROGRAM DIRECTOR, EAST BAY SANCTUARY COVENANT

I, Michael Smith, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I would testify competently and truthfully to these matters.

2. I previously submitted a declaration in this matter. *See East Bay Sanctuary Covenant v. Barr*, No. 3:19-cv-04073-JST (N.D. Cal.) ECF No. 3-2 (July 17, 2019). This declaration supplements that first declaration.

3. For the reasons I explained in my first declaration, the Interim Final Rule ("Rule") at issue in this litigation—which categorically bars from asylum individuals who enter the southern land border after transiting through a third country without applying for protection there—will significantly harm East Bay Sanctuary Covenant ("EBSC") as an organization, seriously frustrate EBSC's mission, and divert organizational resources.

4. EBSC will suffer serious harms if the Rule is allowed to go into effect everywhere other than the Ninth Circuit. To fully remedy the harms the Rule will inflict on EBSC, it is essential that the Rule be declared unlawful and enjoined nationwide, not just in the Ninth Circuit.

5. It is part of EBSC's mission to serve clients regardless of where or how they entered the United States. Accordingly, EBSC's services are not limited to clients who entered the United States in one of the states in the Ninth Circuit. Rather, EBSC serves clients who enter the United States anywhere in the country. A sizable portion of EBSC's clients enter the United States outside the Ninth Circuit's geographic boundaries and then end up in California and apply for asylum. In fact, of the 183 affirmative asylum applications EBSC has filed on behalf of its clients thus far in 2019, 41 of those individuals transited through Mexico and entered the United States in Texas or New Mexico. In other words, more than 22% of EBSC's affirmative asylum

applications filed in 2019 were on behalf of clients who may still be subject to the Rule's categorical bar on asylum under an injunction limited to the Ninth Circuit.

6. An injunction limited in geographic scope to the Ninth Circuit, and thus allowing the Rule to be in effect outside the Ninth Circuit, will result in myriad, significant, and irreparable harms to EBSC.

7. Providing legal services to affirmative asylum applicants is a key part of EBSC's mission and core activities. If the Rule is enjoined only in the Ninth Circuit, EBSC may be unable to serve those clients who enter the United States outside the Ninth Circuit and are subject to the Rule's categorical ban. Being unable to serve a sizable portion of our client base frustrates EBSC's mission and thwarts a core part of our operations.

8. EBSC's funding streams as to these clients will also be jeopardized. As I explained in my first declaration, pursuant to a grant from the California Department of Social Services ("CDSS"), EBSC receives $2,000 for every affirmative asylum case we file. If we are no longer able to handle affirmative asylum cases for individuals who transit through a third country en route to the southern border and enter outside the Ninth Circuit, we likely will face a marked decrease in our budget. Indeed, if the Rule is allowed to remain in effect outside the Ninth Circuit for the rest of 2019, I estimate that EBSC could lose up to $50,000 under the terms of our CDSS grant. If the Rule is allowed to remain in effect outside the Ninth Circuit for 2020, our projected losses under the grant are approximately $100,000.

9. As a result, if the Rule remains in effect outside the Ninth Circuit, we will either have to significantly cut our affirmative asylum program and staff, or overhaul our program to provide types of assistance we are not currently equipped or trained to provide.

10. As I explained in my first declaration, EBSC does not currently have capacity to handle applications for humanitarian relief in the removal context. Yet to continue serving clients affected by the Rule, we will have to shift to representing those individuals in removal cases. Doing so would be extremely resource intensive, as we would have to develop such a program, develop training materials, provide significant training to existing staff, and hire new staff experienced in practicing before the immigration court. Furthermore, representing individuals on withholding of removal and/or Convention Against Torture claims instead of asylum is extremely resource intensive. Among other reasons, such claims are subject to a stricter standard than asylum claims and, unlike asylum claims, do not allow for derivative claims for certain close family members.

11. EBSC considers training law students to be a significant part of our mission, and since the beginning of our affirmative asylum program we have trained more than 750 law students from many universities around the country. A great many law students have informed me that their work for EBSC was their most rewarding experience in law school. Law students cannot represent clients in Removal Proceedings, and if the Rule remains in effect outside the Ninth Circuit we would have to sharply curtail our very successful program of training law students

12. An injunction that enjoins the Rule in the Ninth Circuit but allows it to be in effect elsewhere imposes a significant burden on EBSC because we may either have to totally shut down our services to individuals who enter outside the Ninth Circuit—a significant part of our client base—or bifurcate our operations, providing different services to those subject to the Rule and those not subject to the Rule.

13. Bifurcating our operations in this way will be extremely cumbersome, as we will have to make the changes discussed here and in my first declaration, in addition to maintaining our current operations. Doing so will pose a significant strain on our staff and resources.

14. If EBSC had been given the opportunity to comment on the Rule before it went into effect, EBSC would have submitted comments about why the Rule is unlawful and factually unsupported, arbitrary and why it must be rescinded nationwide.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Michael Smith
Executed this 19th day of August 2019

DECLARATION OF NICOLE RAMOS, BORDER RIGHTS PROJECT DIRECTOR, AL OTRO LADO

I, Nicole Ramos, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I would testify competently and truthfully to these matters.

2. I am a U.S. licensed attorney practicing in the area of immigration law and human rights. I am barred by the State of New York, and I am a former Assistant Federal Public Defender. I am the Border Rights Project Director of Al Otro Lado. In that capacity, I work with asylum seekers in Tijuana, Mexico. I have been a resident of Tijuana for the last five years, and have been working with asylum seekers in Tijuana and accompanying them to U.S. ports of entry since December 2015.

3. In a previous declaration, *see East Bay Sanctuary Covenant v. Barr*, No. 3:19-cv-04073-JST (N.D. Cal.) ECF No. 3-3 (July 17, 2019), Al Otro Lado's Litigation and Policy Director, Erika Pinheiro, explained our organization's work and the harms we will experience from the Interim Final Rule ("Rule") at issue in this litigation, which categorically bars from asylum individuals who enter the southern land border after transiting through a third country without applying for protection there This declaration supplements that first declaration. For the reasons explained in that declaration, the Rule will significantly harm Al Otro Lado as an organization, seriously frustrate Al Otro Lado's mission, divert organizational resources, and jeopardize Al Otro Lado's funding.

4. I write to supplement the Declaration of Erika Pinheiro to make clear that Al Otro Lado will suffer serious harms if the Rule is allowed to go into effect everywhere other than the Ninth Circuit. To fully remedy the harms the Rule will inflict on Al Otro Lado, it is essential that the Rule be declared unlawful and enjoined nationwide, not just in the Ninth Circuit.

5. Of the thousands of noncitizens Al Otro Lado serves through its offices in Tijuana, Mexico, some ultimately enter the United States outside the Ninth Circuit, including Texas and New Mexico. For example, asylum seekers who we encounter through our Tijuana office sometimes will go to a different border point outside the Ninth Circuit where the wait list is not as long as it is in Tijuana, or, out of necessity, will decide to enter elsewhere along the border without inspection to seek asylum.

6. Furthermore, of those individuals who do enter the United States in the Ninth Circuit, many ultimately end up in jurisdictions in the United States outside the Ninth Circuit. For example, Al Otro Lado clients who entered the United States along the southern border in California have ended up in Colorado, Georgia, Maine, Maryland, Michigan, Minnesota, and Wisconsin. These individuals wind up in jurisdictions outside the Ninth Circuit because they are detained there, or because they are paroled from detention and go to live with sponsors who reside outside the Ninth Circuit.

7. Indeed, in my experience, it is quite common for asylum seekers to enter the country at one place along the southern border and travel to other parts of the country before applying for asylum. For example, asylum seekers who present at a port of entry or are apprehended near the border may be detained by the government and transferred to a location far away from their point of entry. As a result, those asylum seekers may have a credible fear interview in a different Circuit from that in which they entered. Asylum seekers who are placed in removal proceedings after passing credible fear and then released on bond or parole may travel to any part of the country and request to have their removal proceedings transferred there. Thus, an asylum seeker may, for example, enter the U.S. through California, have her credible fear interview in New Jersey, and ultimately apply for asylum through her removal proceedings in Maryland. In my

experience, our clients who are unaccompanied minors are particularly likely to have spent time in multiple shelters in different parts of the country before applying for asylum.

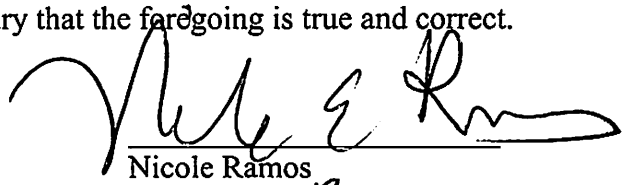
8. It is impossible for Al Otro Lado to know with certainty ex ante where a given asylum seeker whom we serve prior to their entry will ultimately enter the United States, or where they will end up once they are in the United States, or where a given asylum seeker whom we serve while in detention will end up if released from custody.

9. Therefore, if the Rule is only enjoined in certain parts of the country, rather than nationwide, Al Otro Lado will have to advise asylum seekers without knowing whether they will ultimately be subject to the Rule's categorical asylum bar or not. To fulfill our professional obligations, we will have to account for all possibilities in our advice, and will have to advise asylum seekers about outcomes if the Rule is applied to them, and also if it is not. Having to do so will require us to expend significant organizational resources regarding training materials, staff time, resources, and capacity, and would create a serious burden for Al Otro Lado.

10. As detailed in Erika Pinheiro's declaration, the Rule requires Al Otro Lado to revamp our representation strategy; overhaul our training materials, service delivery model, and materials we have developed to assist asylum seekers; engage Mexican attorneys; and redo our registration documents for our non-profit status in Mexico. These harms persist if the Rule is only enjoined in part of the country, because, as explained above, Al Otro Lado will have to advise asylum seekers without knowing whether or not they ultimately will be subject to the Rule.

11. Had Al Otro Lado been provided the opportunity to comment on the Rule before it went into effect, Al Otro Lado would have submitted comments about why the Rule is unlawful and factually unsupported, and why it must be rescinded nationwide.

I hereby declare under penalty of perjury that the foregoing is true and correct.



Nicole Ramos
Executed this 19th day of August 2019

DECLARATION OF CAMILA ALVAREZ, MANAGING ATTORNEY, CENTRAL AMERICAN RESOURCE CENTER OF CALIFORNIA

I, Camila Alvarez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I would testify competently and truthfully to these matters.

2. I am the Managing Attorney for the Central American Resource Center of California ("CARECEN") located in Los Angeles, California. CARECEN is a plaintiff in *East Bay Sanctuary Covenant v. Barr*.

3. In a previous declaration, *East Bay Sanctuary Covenant v. Barr*, No. 3:19-cv-04073-JST (N.D. Cal.) ECF No. 3-5 (July 17, 2019), CARECEN's Legal Director, Daniel Sharp, explained our organization's work and the harms we will experience from the Interim Final Rule ("Rule") at issue in this litigation—which categorically bars from asylum individuals who enter the southern land border after transiting through a third country without applying for protection there. For the reasons explained in that declaration, the Rule will significantly harm CARECEN as an organization, seriously frustrate CARECEN's mission, and divert organizational resources.

4. I write supplement the Declaration of Daniel Sharp to make clear that CARECEN will suffer serious harms if the Rule goes into effect everywhere other than the Ninth Circuit. To fully remedy the harms the Rule will inflict on CARECEN, it is essential that the Rule be declared unlawful and enjoined nationwide.

5. It is an essential part of CARECEN's mission to serve asylum seekers from Central America regardless of where or how they entered the United States. CARECEN's services are not limited to clients who entered the United States in one of the states in the Ninth Circuit. As explained in Mr. Sharp's declaration, nearly all of our current caseload of

approximately 200 asylum clients would be subject to the Rule because they entered through the southern border of the United States after transiting through a third country without applying for asylum. Critically, at least 60% of these individuals entered the United States outside of the Ninth Circuit's geographic boundaries—primarily through Texas. Thus, the majority of CARECEN's asylum clients might still be subject to the Rule's categorical bar on asylum under an injunction limited to the Ninth Circuit.

6. In my experience, it is quite common for asylum seekers to enter the country at one place along the southern border and travel to other parts of the country before applying for asylum. For example, asylum seekers who present at a port of entry or are apprehended near the border may be detained by the government and transferred to a location far away from their point of entry. As a result, those asylum seekers may have a credible fear interview in a different Circuit from that in which they entered. Asylum seekers who are placed in removal proceedings after passing credible fear and then released on bond or parole may travel to any part of the country and request to have their removal proceedings transferred there. Thus, an asylum seeker may, for example, enter the U.S. through Texas, have her credible fear interview in New Jersey, and ultimately apply for asylum through her removal proceedings in California. In my experience, our clients who are unaccompanied minors are particularly likely to have spent time in multiple shelters in different parts of the country before applying for asylum. Affirmative asylum applicants likewise may enter in a state in one Circuit and then apply for asylum in another Circuit.

7. An injunction limited in geographic scope to the Ninth Circuit, and thus allowing the Rule to be in effect outside the Ninth Circuit, would result in myriad, significant, and irreparable harms to CARECEN.

8. If the Rule were enjoined only in the Ninth Circuit, CARECEN's ability to serve asylum clients would be severely compromised, and we would be required to divert significant resources. Our organization would be unable to assist asylum seekers applying affirmatively to the United States Citizenship and Immigration Services, because they would no longer be eligible for that relief. Instead, CARECEN would only be able to assist individuals in removal proceedings in the Ninth Circuit, which is much more resource-intensive than representing someone who is applying affirmatively.

CARECEN currently represents well over 100 clients who are applying for asylum in removal proceedings in the Ninth Circuit, a significant number of whom entered the country outside of the Ninth Circuit and may still be subject to the Rule. Going forward, CARECEN would be forced to assist these individuals in applying for withholding and CAT, rather than asylum.

9. If we had to represent the majority of our asylum-seeking clients on withholding of removal and/or Convention Against Torture claims instead of asylum, it would require a significant investment of additional resources. Among other reasons, such claims are subject to a stricter standard than asylum claims and, unlike asylum claims, do not allow for derivative claims for certain close family members. Even though these claims will cause us to devote substantially more resources, we currently receive a fixed amount of funding per removal case and have already committed to certain per-attorney case handling figures that are based on asylum application estimates. This would cause a significant strain on our organization's budget and require diverting critical resources from other core programs.

10. An injunction that enjoins the Rule in the Ninth Circuit but allows it to be in effect elsewhere also imposes a significant burden on CARECEN because we will have to

provide different services to those subject to the Rule and those not subject to the Rule, which will be administratively difficult.

11. CARECEN cannot, consistent with its mission, cherry pick and serve only those individuals who are not subject to the Rule. It would also be difficult as a practical matter for CARECEN to verify in the intake process the location where a prospective client entered the United States and any other geography-related information that may be relevant to the applicability of the Rule, and then enter into an attorney-client relationship accordingly. Doing so at the intake stage would be time-consuming and resource-intensive and CARECEN would not be compensated for this additional screening work, which would strain the organization's resources. This is particularly true because CARECEN's prospective clients frequently do not have copies of their Notices to Appear listing the location of their entry and do not know the exact location where they entered the country. Thus, these critical questions may require additional investigation and screening to determine the applicability of the Rule.

12. Had CARECEN been provided the opportunity to comment on the Rule before it went into effect, CARECEN would have submitted comments about why the Rule is unlawful and factually unsupported, and why it must be rescinded nationwide.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Camila Alvarez
Executed this 10th day of August 2019

DECLARATION OF AARON REICHLIN-MELNICK

1. I, Aaron Reichlin-Melnick, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

2. I am a policy analyst at the American Immigration Council ("Immigration Council"), a nonprofit and non-partisan organization whose mission includes the use of facts to educate the public on the important and enduring contributions that immigrants make to America. At the Immigration Council, I track and analyze immigration-related statistics produced by the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR"), including trends in the processing of asylum seekers and the case outcomes for individuals placed in removal proceedings.

3. I am familiar with the relevant public statistics published by DHS and EOIR and the methodology that DHS and EOIR use to produce statistics relating to the processing of asylum seekers and to the outcomes of immigration court proceedings. I have previously submitted declarations analyzing government-produced immigration statistics in *Innovation Law Lab v. McAleenan*, 3:19-cv-00807-RS (N.D. Cal. filed Feb. 14, 2019) and *Padilla v. ICE*, No. 2:18-cv-00928-MJP (W.D. Wash. filed June 25, 2018).

4. In preparation for this declaration I have extensively reviewed public statistics on motions to change venue or transfer in immigration court, as well as information on asylum seekers' movements inside the United States after entry. I have also reviewed the Ninth Circuit's stay decision in this case, as well as this Court's decision to grant a preliminary injunction.

5. The data I analyzed reveals that motions to change venue or transfer in immigration court are routine. Immigrants frequently move from one jurisdiction to another, either of their own free

will or because Immigration and Customs Enforcement (ICE) transfers them from one detention center to another.

6. In addition, the location where an asylum seeker enters the United States does not necessarily correspond to his or her final location once inside the country. Many asylum seekers who arrive at the border in California or Arizona will move outside the Ninth Circuit's jurisdiction, just as many asylum seekers who arrive at the border in New Mexico or Texas will move inside the Ninth Circuit's jurisdiction. Some asylum seekers in DHS custody may even be moved into and out of the Ninth Circuit's jurisdiction more than once.

Immigrants Routinely Change Venue in Immigration Court

7. Initial jurisdiction for an immigration court proceeding is set by DHS with the filing of a Notice to Appear. 8 C.F.R. § 1003.14(a). Once the Notice to Appear has been filed, "venue shall lie at the Immigration Court where jurisdiction vests," 8 C.F.R. § 1003.20(a), and may only be changed following a motion by one of the parties. 8 C.F.R. § 1003.20(b).

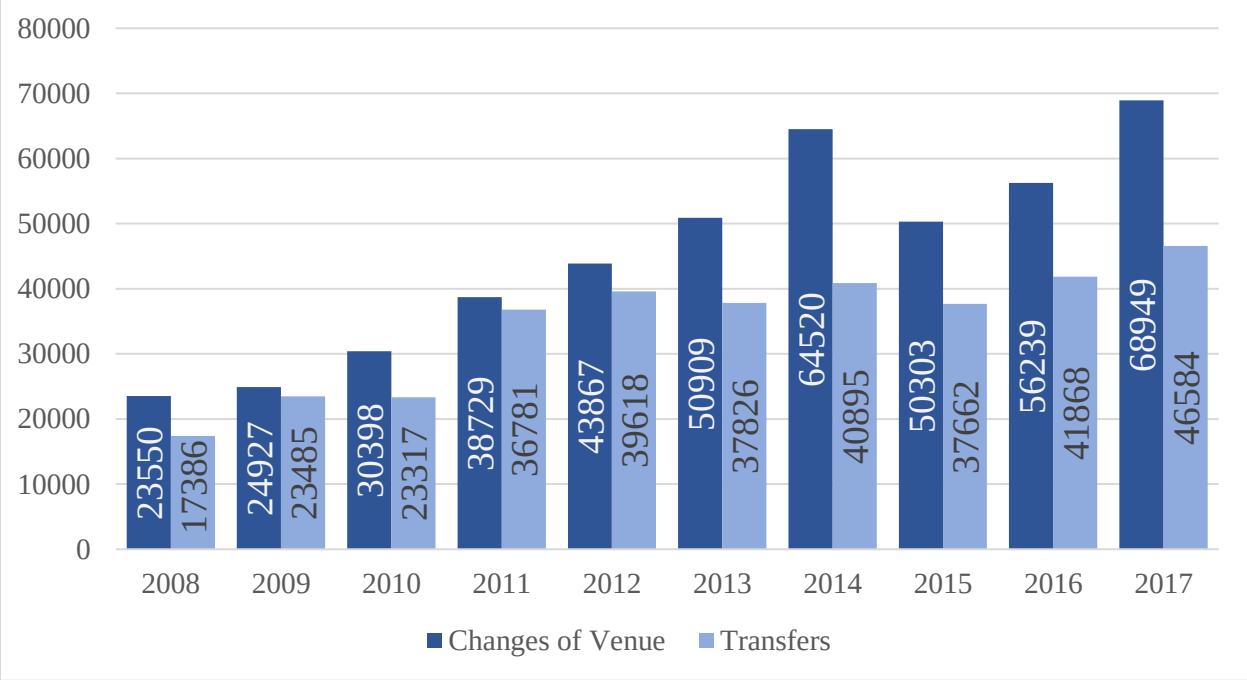
8. Where DHS moves a detained immigrant to a new immigration court jurisdiction, it is required to notify EOIR of the transfer. 8 C.F.R. § 1003.19(g). EOIR reports that change in jurisdiction as a "transfer." EOIR has defined "transfer" as "The Department of Homeland Security's moving of detained aliens between detention facilities or the administrative transfer of an alien's case from one hearing location to another." EOIR, *2016 Statistics Yearbook* (2017), at Glossary 12. Because EOIR reports "changes of venue" separately from "transfers," it is possible to determine the minimum percentage of jurisdictional changes that occurred at DHS's behest following the physical transfer of an individual in DHS custody from one jurisdiction to another.

9. In fiscal year 2017—the most recent year where statistics are available—a total of 115,533 motions to change venue or transfer were granted in immigration court, divided between 68,949 successful change of venue motions and 46,584 transfers. EOIR, *2017 Statistics Yearbook* (2018), at 15.

10. As shown in Figure 1, between 2008 and 2017, changes in jurisdiction (successful changes of venue and transfers) grew by 182 percent. EOIR, *2012 Statistics Yearbook* (2013), at D5. Changes of venue increased by 193 percent (from 23,550 in 2008), and transfers increased by 168 percent (from 17,386 in 2008). This growth corresponds with the overall growth of both immigration detention and the immigration court backlogs as a whole.

Figure 1: Motions to Change Venue/Transfer by Fiscal Year

Source: EOIR, *Statistics Yearbook 2017* (2018), at 15; EOIR, *Statistics Yearbook 2012* (2013), at D5.

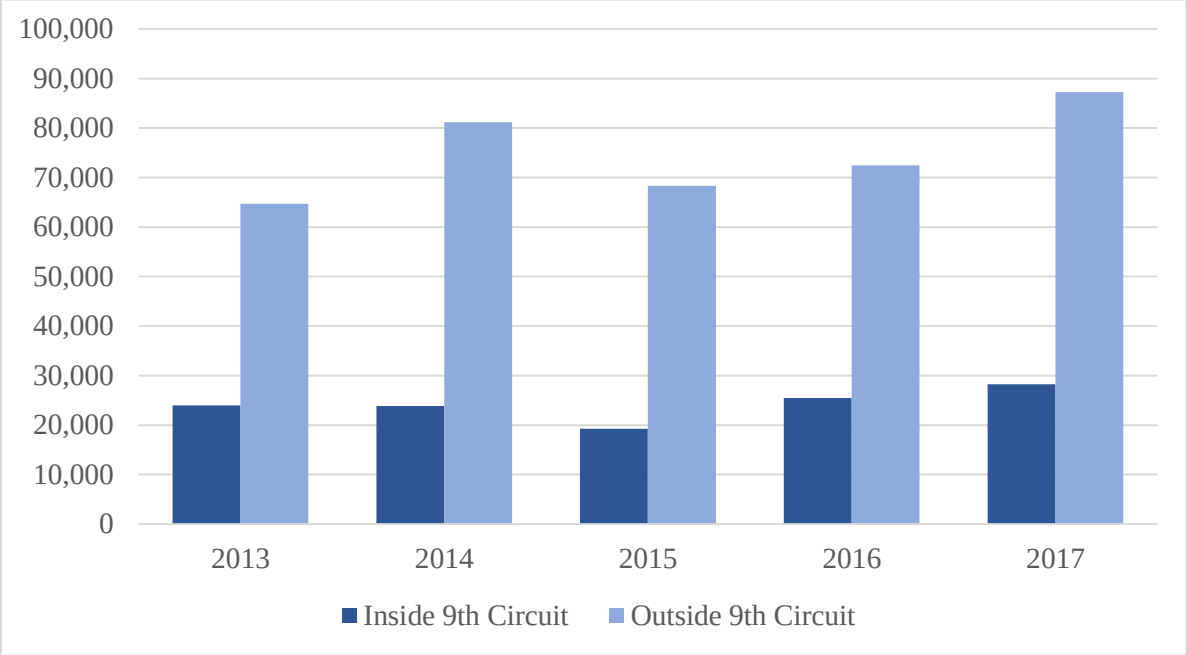


11. EOIR also provides court-level data on changes of venue and transfers. Using this data, it is possible to determine what percent of jurisdictional changes are granted inside the Ninth Circuit and outside the Ninth Circuit.

12. In Fiscal Year 2017, 24.4 percent of motions to change venue or transfer (28,237) were granted in immigration courts inside the Ninth Circuit, compared to 75.6 percent (87,296) granted in immigration courts outside the Ninth Circuit (see Figure 2).

Figure 2: Change of Venue and Transfers by Fiscal Year, by Immigration Court Location

Source: EOIR, *Statistics Yearbook 2017* (2018), at 16; EOIR, *Statistics Yearbook 2016* (2017), at C8; EOIR, *Statistics Yearbook 2015* (2016), at C8; EOIR, *Statistics Yearbook 2014* (2015), at C7, EOIR, *Statistics Yearbook 2013* (2014), at C7.



13. DHS's authority to transfer asylum seekers from one jurisdiction to another also means that individuals may be transferred outside the Ninth Circuit. There are significantly more ICE detention centers outside of the Ninth Circuit (113) than inside of it (19). *See Detention Facility Locator*, ICE.gov, https://www.ice.gov/detention-facilities (last accessed August 18, 2019). ICE detention data produced through FOIA revealed that as of November 2017, ICE had an average daily population of 35,350 people detained outside of the Ninth Circuit, compared to 9,908 people detained inside the Ninth Circuit. Nat'l Immigrant Justice Center, *ICE Detention*

Facilities As Of November 2017 (Mar. 13, 2018), *https://immigrantjustice.org/ice-detention-facilities-november-2017.*

14. Individuals released from DHS custody also move into and out of the Ninth Circuit. A study of 1,545 individuals released by CBP in El Paso, TX reveals that asylum seekers end up settling in a wide variety of locations inside the United States. *See* Nick Miroff and Tim Meko, *A snapshot of where migrants go after release into the United States*, Wash. Post (Apr. 12, 2019), https://www.washingtonpost.com/immigration/2019/04/13/snapshot-where-migrants-go-after-release-into-united-states/. Rather than remaining within one jurisdiction, the data indicates that there is almost no connection between place of entry and ultimate destination. Despite being released in El Paso, hundreds of asylum seekers moved to locations within the Ninth Circuit like San Francisco, Los Angeles, Portland, or Seattle.

15. Data shows that a significant percentage of all cases in immigration court involve a change in jurisdiction. Each year tens of thousands of cases are transferred from one immigration court to another.

EXECUTED this 19th day of August, 2019.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

East Bay Sanctuary Covenant; Al Otro Lado; Innovation Law Lab; and Central American Resource Center in Los Angeles,

Plaintiffs,

v.

William Barr, Attorney General, in his official capacity; U.S. Department of Justice; James McHenry, Director of the Executive Office for Immigration Review, in his official capacity; the Executive Office for Immigration Review; Kevin McAleenan, Acting Secretary of Homeland Security, in his official capacity; U.S. Department of Homeland Security; Ken Cuccinelli, Acting Director of the U.S. Citizenship and Immigration Services, in his official capacity; U.S. Citizenship and Immigration Services; John Sanders, Commissioner of U.S. Customs and Border Protection, in his official capacity; U.S. Customs and Border Protection; Matthew Albence, Acting Director of Immigration and Customs Enforcement, in his official capacity; Immigration and Customs Enforcement,

Defendants.

Case No.: 3:19-cv-04073-JST

[PROPOSED] ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION TO CONSIDER SUPPLEMENTAL EVIDENCE AND RESTORE THE NATIONWIDE SCOPE OF THE INJUNCTION

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**Admitted Pro hac vice*
***Pro hac vice application forthcoming*

Plaintiffs' motion to consider supplemental evidence and restore the nationwide scope of the injunction came before this Court for consideration on August __, 2019. Upon consideration of the motion, and for good cause shown, Plaintiffs' motion is hereby GRANTED.

Date:

_____

United States District Judge